

DARRELL F. SMITH, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

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May 27, 1968

DEPARTMENT OF LAW LETTER OPINION NO. 68-9-L (R-51)

REQUESTED BY: SARAH FOLSOM, State Superintendent  
of Public Instruction

QUESTION: In the light of the changes brought about by Chapter 19, 28th Legislature, Third Special Session, in the procedure permitted for exceeding the statutory school Budget 6% Limit, what change, if any, has occurred with respect to excluding from the permissible operational expenditure budget the following:

1. Federal aid program grants that are 100% Federal in source?
2. Federal aid program funds that are 100% Federal in source but require up to 50% matching with school district funds and are paid on a reimbursable basis?
3. Federal aid program funds that are matched at the state level and also require up to 50% matching with school district funds and are paid on a reimbursable basis?
4. Federal aid funds that are not earmarked for any specific educational program?
5. Cash gifts that are donated to a school district specifically earmarked for a particular project or purpose?

ANSWER: See body of opinion.

In addition to providing school districts with a system of uniform expenditure accounting, the budget form prescribed in § 15-1201, A.R.S., as amended, also contains the Budget 6% Limit Check formula.

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The purpose of the formula is to maintain a relatively stable school district property tax rate and to allow for a tax rate increase only if a majority of the real property taxpayers of the district vote for a budget in excess of the 6% limit check (A.R.S. § 15-1202).

The legislature has provided certain enumerated exemptions from the 6% limit check including the exemption of school districts with four teachers or less (A.R.S. § 15-1201.01). Another permits districts with a minimum starting teacher salary of under \$5300.00 per annum to exceed the 6% limit to a certain extent. (Chapter 83, Laws of 1968, 2nd Regular Session). In the recent case of Bushnell v. Superior Court of Maricopa (1967) (102 Ariz. 309, 428 P.2d 987, as modified in 102 Ariz. 465, 433 P.2d 15), our court held if a statute specifies one exception to general rule, other exceptions are excluded (*expressio unius est exclusio alterius*). This rule would certainly be applicable here.

In addition, the legislature has provided in §§ 15-1141 and 15-1142, A.R.S., Federal Grants for Educational Purposes, that "the State Board of Education may accept on behalf of the state monies appropriated by act of Congress for defense in education, reduction of illiteracy, teaching of immigrants or other educational purposes . . . (and) shall apportion (such) monies for the aid of common and high school districts of the state, to supplement monies otherwise provided for. Monies so apportioned shall be expended by the common and high school districts for the purposes and in the manner set forth in the federal grant . . . The State Board may, with the approval of the Board of Supervisors, authorize expenditures of monies received pursuant to this article in excess of the annual budgets of the common and high school district." (Emphasis supplied)

It is the opinion of this office that all federal monies accepted by the State Board of Education under the provisions of A.R.S. §§ 15-1141 and 15-1142 are subject to exclusion from the Budget 6% Limit Check provided the following conditions are complied with: (1) The federal education fund is accepted and apportioned by the State Board of Education, (2) The federal education fund is specified for a particular educational purpose (and not to be simply a non-categorical revenue), (3) The funds

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are supplemental money, in no way supplanting other school district funds, and (4) The expenditure of these federal monies in excess of the annual budget has the approval of a majority of the County Board of Supervisors.

There currently is a procedure being used by school districts for obtaining approval of the Board of Supervisors for federal aid expenditures. This was not changed by Chapter 19 of Laws of 1968, however, its scope may now be extended to other specified federal aid funds, as hereinafter indicated which have not previously been brought to the attention of the Board of Supervisors because there was no special need budget-wise to do this.

Public Law 89-10 (ESEA) has been excluded from the Budget 6% Limit Check (A.G. letter, October 4, 1965) and is accounted for on a special line under Category V, Auxiliary Services, in the budget form. This includes programs funded on a 100% federal money grant basis with no matching funds required of a school district.

Public Law 89-750, Title III, the Adult Education Program, likewise is excluded and is accounted for on this special line under Category V, Auxiliary Services. This is a 100% federal money grant with a 10% local matching contribution in cash or in kind.

Public Law 85-864, Titles III and V-A (National Defense Education Act), are 100% federal in source but require a 50% (or other specified per cent) local matching contribution. These programs may also be excluded from the Budget 6% Limit Check if a school district budgets the federal aid portion (50% or other specified per cent) in the existing special federal aid account under Category V, Auxiliary Services, for federal aid and incurs program eligible expenditures during the fiscal year in such a manner that the federal aid account and other (matching) budgetary accounts are charged in the correct ratio. This program is established on a reimbursable basis but this has no effect on its status as a federal fund eligible for exclusion from the Budget 6% Limit Check.

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A.R.S. §§ 15-1053 and 15-1054, together with Special Federal Vocational Education Laws (P.L. 64-347, P.L. 79-586, P.L. 87-415 and P.L. 88-210), establish Federal Vocational Aid Programs under the State Board of Vocational Education in which state funds are matched with federal funds in accordance with federal law. Such funds are then allocated to school districts which comply with the federal law relative to the formation of vocational classes in accordance with § 15-1054, A.R.S., and are paid on an up to 50% reimbursable basis.

Notwithstanding that state matching funds are required to qualify the state for these federal Vocational Education aid programs, all of the monies allocated to the school districts for vocational education must be considered federal funds for budgeting purposes. This is for the reason that the Federal Vocational Education program could not exist without state participation and because vocational education monies must be supplemental to all other state and local funds as required by Federal Vocational Education Acts and the state must comply with such acts to continue receiving the federal funds. This is required by the rules and regulations pertaining to the Federal Vocational Funds. In the case of the Federal Vocational Education Act of 1963, the Federal Register dated December 18, 1963, page 12342 states: "Federal funds allocated to the State . . . shall not be used to supplant state or local funds. . . ."

Vocational Education funds allocated to the school districts must not be used to reduce the local district tax rate because to do so would be putting them to a use supplanting and not supplementing local effort. Therefore, the Vocational Education funds allocated to the school districts qualify as being outside the Budget 6% Limit Check and shall be accounted for, as all other federal funds on a separate line for federal aid funds in the budget form under Category V Auxiliary Services.

It should be pointed out, however, that any matching funds by the school district are subject to the Budget 6% Limit Check.

Public Law 73-167, the Indian Education (Johnson-O'Malley) aid plan, is 100% federal in source but it is non-categorical aid which means it is not a supplemental educational program to the

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schools receiving its aid. Such funds simply provide money to educate Indian children along with other children principally because there is little, if any, property tax money to support Indian children in a public school. This federal aid plan does not require nor contemplate separate accounting for its expenditure. Expenditures from such funds must therefore be included within the permissible budget controlled by the Budget 6% Limit Check.

Public Law 81-874, aid to schools on behalf of federally connected children, is also a non-categorical aid program and is paid directly to Arizona school districts by the federal government. It is not administered by the State Board of Education and therefore these funds shall be included within the permissible expenditure budget, subject to the Budget 6% Limit Check.

Public Law 81-815 is for building purposes and therefore is outside of the Maintenance and Operation Budget. It is, of course, not subject to the Budget 6% Limit Check.

Forest Reserve Fees and National Forest allocations are non-categorical supplementary aid. Expenditures of these federal funds fall within the permissible expenditure budget controlled by the Budget 6% Limit Check.

All present federal aid programs to Arizona school districts have been reviewed and discussed above. Any federal aid funds received subsequent to this opinion shall be considered at the time of their receipt relative to the accounting in the school district budget.

It should be pointed out that in order for a federal educational aid fund to qualify for exclusion from the Budget 6% Limit Check, it is essential that the expenditure of these funds has been approved by the County Board of Supervisors pursuant to § 15-1142, A.R.S.

In regard to your question number 5, this office has previously ruled that a school district may receive a gift or donation. (A.G. Opinion 68-13C). However, there is no provision in

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the law for school districts to make expenditures of gift or donated funds outside of the permissible operating budget controlled by the Budget 6% Limit Check.

To allow expenditures of funds, whether received by gift or otherwise, outside the budget controls would be in conflict with the state laws setting up a limited operational expenditure budget. Any exceptions for the expenditure of funds derived from gifts, donations or other sources, must be specifically exempted in the law as is the case of school districts employing four teachers or less, federal aid programs of certain types and for raising classroom teachers salaries under Senate Bill 182, 28th Legislature, 2nd Regular Session.

Gifts, donations or grants of specific items of property, need not be accounted for in the school district budget. It is the expenditure of funds which are subject to the Budget 6% Limit Check and not the receipt of either money or property. Gifts or donations of money are not subject to the Budget 6% Limit Check if the funds are credited to the general fund of the district for the purpose of reducing taxes and not for the purpose of increasing the school district budget.

It is not illegal or improper for an outside organization to employ teachers or instructors and to provide classes for golfing, swimming or driver training but unless the school board otherwise fully administers the program there can be no allowance for academic credit of any kind for pupils attending. Further, if the teachers or instructors are paid by the outside organization they will be employees of the organization and not of the school district. As an aside there is a liability question involved with the district's insurance coverage if the program is attempted to be run outside regular procedure.

A gift or donation may be received and an equivalent amount may be expended for a specific program but it does not release additional expenditure capacity beyond the Budget 6% Limit Check

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and the only special advantage to the school district under this procedure is the reduction of district taxes.

Respectfully submitted,

A handwritten signature in cursive script, reading "Darrell F. Smith".

DARRELL F. SMITH  
The Attorney General

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